



DECISION

Number 70/PUU-IX/2011

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final level, has passed a decision in the case of petition for Judicial Review of Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security and Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] 1. Name : **M. Komarudin**
Occupation : General Chairperson of the Federation of Indonesian Labor Union Associations (*Federasi Ikatan Serikat Buruh Indonesia*)
Address : Koleang Neighborhood Ward 06, Neighborhood Block 01, Koleang Village, Jasinga District, Bogor Regency

2. Name : **Muhammad Hafidz**
Occupation : Head of the Secretariat of the Federation of Indonesian Labor Union Associations
Address : Jalan Kapuk Kamal Rawa Melati, Neighborhood Ward 05, Neighborhood Block 01, Tegal Alur Sub-District, Kalideres District, West Jakarta
3. Name : **Yulianti**
Occupation : Laborer at PT. Megahbuana Citramasindo
Address : Jalan Kali Baru Barat IV Neighborhood Ward 011, Neighborhood Block 07, Number 47, Kalibaru Sub-District, Cilincing District, North Jakarta

In this matter, each of the above-mentioned persons are members of the executive board of and acting for and on behalf of **the Federation of Indonesian Labor Union Associations**, having its address at Jalan Otto Iskandardinata (Gg. Setia), Neighborhood Ward 008, Neighborhood Block 02, Number 23D, Bidaracina Sub-District, Jatinegara District, East Jakarta,

which has been registered as a Worker Union/Labor Union with the office of Manpower and Transmigration Service Office of East Jakarta Administrative City, with Proof of Registration Number 700/IV/P/III/ 2011.

In this matter granting power to Dr. Andi Muhammad Asrun. S.H, M.H. and Merlina, S.H., both of whom being Advocates and Legal Counsels in “Muhammad Asrun and Partners (MAP) Law Firm”, having its address at Gedung PGRI, Jalan Tanah Abang III Number 24, Central Jakarta. In this matter by virtue of Special Power of Attorney dated September 20, 2011, either individually or collectively act for and on behalf of the party granting power;

Hereinafter referred to as ----- **the**
Petitioners;

- [1.3]** Having read the petition of the Petitioners;
Having heard the statements of the Petitioners;
Having heard the statements of the Government;
Having heard and read the statements of the People’s Legislative Assembly;
Having heard the statements of the witness and Expert of the Petitioners;
Having heard the statements of the witness and Expert of the Government;
Having examined the evidence of the Petitioners;

Having read the written conclusion of the Petitioners and the Government;

2. FACTS OF THE CASE

[2.1] Considering whereas the Petitioners have filed a petition in a letter dated September 26, 2011, which has been registered with the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on September 27, 2011 based on Certificate of Receipt of Petition File Number 33/PAN.MK/2011 and recorded in the Registry of Constitutional Cases on October 6, 2011 under Number 70/PUU-IX/2011, and which has been revised through a petition dated October 26, 2011, namely as follows:

1. AUTHORITY OF THE CONSTITUTIONAL COURT

1. Whereas the provision of Article 24 paragraph (2) of the 1945 Constitution reads as follows, "*The judicial powers shall be exercised by a Supreme Court and its subordinate judicature bodies namely the courts of general jurisdiction, the courts of religious jurisdiction, the courts of military jurisdiction, the courts of state administration jurisdiction, and by a Constitutional Court.*"
2. Whereas the provision of Article 24C paragraph (1) of the 1945 Constitution states that, "*The Constitutional Court shall have the power to hear cases at the first and final instance the*

decision of which shall be final, to conduct judicial review on the conformity of laws to the Constitution, to decide disputes related to the powers of state institutions vested in them by the Constitution, to make decisions for the dissolution of political parties, and to decide disputes concerning the results of general elections.”

3. Whereas the provision of Article 10 paragraph (1) of Law Number 24 Year 2003 concerning Constitutional Court, as amended by Law of the Republic of Indonesia Number 8 Year 2011 concerning Amendment to Law of the Republic of Indonesia Number 24 Year 2003 (hereinafter referred to as the Constitutional Court Law, **Exhibit P-4**) which reads, “The Constitutional Court shall have the authority to hear cases at the first and final level, the decision of which shall be final, in order to:
 1. conduct judicial review of Laws against the 1945 Constitution of the State of the Republic of Indonesia;
 2. decide upon disputes over the authorities of state institutions whose authorities are granted by the 1945 Constitution of the State of the Republic of Indonesia;
 3. decide upon the dissolution of political parties; and
 4. decide upon disputes over the results of general elections.”

4. Whereas since the objects of this petition for review are Article 4 paragraph (1) of Law Number 3 Year 1992 and Article 13 paragraph (1) of Law Number 40 Year 2004 against the 1945 Constitution of the State of the Republic of Indonesia, the Constitutional Court has the authority to conduct judicial review of the Laws against the 1945 Constitution.

2. LEGAL STANDING OF THE PETITIONERS

1. The recognition of the right of every Indonesian citizen to file a petition for judicial review of Laws against the 1945 Constitution is one of the indicators of progress in the life of the nation and the state. The judicial review of Laws against the 1945 Constitution is a manifestation of constitutional guarantee with regard to the implementation of fundamental rights of every citizen as provided for in Article 24C of the 1945 Constitution and the Constitutional Court Law. The Constitutional Court is a judicial body which protects human rights as a manifestation of the role as the guardian of the constitution and the sole interpreter of the constitution.

Article 51 paragraph (1) of the Constitutional Court Law states, "The Petitioner shall be the party considering that their constitutional rights and/or authority are impaired by the coming into effect of a Law, namely:

- a. individual Indonesian citizens;
 - b. customary law community groups insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of Republic of Indonesia as regulated in Law;
 - c. public or private legal entities;
 - d. state institutions”.
2. The “organization standing” doctrine is not just recognized as a doctrine, it has also been adopted in the Indonesian laws and regulations. However, not all organizations may act in representing the general/public interest, since it is only for organizations which fulfill certain requirements as provided for in various laws and regulations as well as jurisprudences, namely in the form of legal entity or foundation; in which the Articles of Association of the organization concerned explicitly states the purpose of the establishment of the organization; and it has been implementing activities in accordance with its articles of association;
 3. Whereas the Petitioners, by referring to Article 28C paragraph (2) and Article 28E paragraph (3) of the 1945 Constitution, namely as individual Indonesian citizens, and at the same time as a group of people having a common interest, who have been showing concern as well as conducting their

activities in the protection and enforcement of the rights of laborers in Indonesia, in which the duties and role of the Petitioners in implementing the activities of protection, defense, and enforcement of justice related to the constitutional rights of the laborers in Indonesia are assumed without making differentiation based on gender, ethnicity, race and religion, in the labor union called the Federation of Indonesian Labor Union Associations, having the purpose to lay a foundation for the unity of the laborers in establishing a fair labor relationship, by conducting protests against all policies of the entrepreneurs, as well as the policies of the government which do not guarantee the constitutional rights of the laborers, as evidenced in the Articles of Association of the Petitioners (**Exhibit P-5**).

The Constitutional Court's recognition of the legal standing of the Federation of Indonesian Labor Union Associations in taking part in the legal proceedings before the Constitutional Court, is at least evidenced by the Decisions in Cases Number 2/PUU-VI/2008, 18/PUU-VI/2008 and 19/PUU-VII/2009, which granted legal standing to the Federation of Indonesian Labor Union Associations with the qualification of an individual or a group of people.

4. Whereas the Constitutional Court has provided the definition and cumulative limit of an impairment of the constitutional rights and/or the authority resulting from the coming into effect of a Law pursuant to the Constitutional Court's Decision Number 006/PUU-III.2005, which have to fulfill the requirements, among other things, as follows:

the existence of the constitutional rights of the Petitioners granted by the 1945 Constitution, namely the right to obtain social security without exception based on Article 28H paragraph (3) of the 1945 Constitution;

whereas the constitutional right of the Petitioners to obtain social security without exception has been impaired by the coming into effect of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law, which provides that in order to become a social security participant, it is solely the obligation of the employer or the entrepreneur to register to the social security organizing body, therefore, if the employer or the entrepreneur does not register the workers/laborers, including other laborers not associated with the Petitioners, their right to become social security participants will be limited, this means that the constitutional impairment has been specific in nature and has actually occurred in PT. Anugerah

Setia Lestari and in PT. Megahbuana Citramasindo (**Exhibit P-6, Exhibit P-6A**) as well as in many other companies, as a result, the laborers have lost the protection with regard to occupational accident, illness, pregnancy, childbirth, old age and death.

5. Based on the description above, the Petitioners are of the opinion that the Petitioners have the legal standing as Petitioners in the petition for judicial review of Law against the 1945 Constitution.

3. THE REASONS OF THE PETITION FOR JUDICIAL REVIEW OF LAWS

1. Whereas social security is the right of every person without exception, including workers/laborers, as stated in the provision of Article 28H paragraph (3) of the 1945 Constitution, which reads, "*Every person shall be entitled to social security allowing them to develop completely as a dignified human being*", as well as the mandate of the 1948 United Nations (UN) Declaration concerning Human Rights, which has also been confirmed in the International Labor Organization (ILO) Convention Number 102 Year 1952, which recommends all countries to provide minimum protection to every worker, which was subsequently set forth in Stipulation

of the People's Consultative Assembly of the Republic of Indonesia Number X/MPR/2001, which assigned the President the task to establish a National Social Security System in order to provide a comprehensive and integrated social protection.

2. Whereas on February 17, 1992, the Government passed Law Number 3 Year 1992 concerning Manpower Social Security (State Gazette of the Republic of Indonesia Year 1992 Number 14, Supplement to the State Gazette Number 3468), to provide protection for every worker/laborer as the right of every person without exception.

However, the right of workers/laborers to obtain manpower social security which provides protection with regard to occupational accident, illness, pregnancy, childbirth, old age and death, can only be obtained if the employer for whom the workers/laborers work, has registered the workers/laborers to the Organizing Body namely PT. Jamsostek, as regulated in the provision of Article 4 paragraph (1), which states, "*The manpower social security program as referred to in Article 3 must be conducted by every company for the worker performing work in a working relation in accordance with the provisions of this law.*"

3. Whereas on October 19, 2004, the Government passed Law Number 40 Year 2004 concerning National Social Security System (State Gazette of the Republic of Indonesia Year 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456), which is aimed at providing certainty of protection and social welfare to all Indonesian people, in the events which may result in the lost of or decrease in income, due to illness, accident, lost of job, old age or retirement.

However, once again the right of workers/laborers to obtain social security will only be implemented if the entrepreneur for whom the workers/laborers work has registered the workers/laborers to the Organizing Body, as regulated in the provision of Article 13 paragraph (1), which states, "*Employers shall be required to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in.*"

4. Whereas it has been a fundamental right for every person to obtain social security as the mandate of the provision of Article 28H paragraph (3) of the 1945 Constitution, without exception, including each and every worker/laborer who is entitled to manpower social security as mandated by the

provision of Article 3 paragraph (2) of the Manpower Social Security Law. However, the fact is that the right of the workers/laborers to obtain social security can only be actualized if the entrepreneur for whom the workers/laborers work registers the workers/laborers to the Organizing Body by paying contributions in the amount of 4.24% up to 11.74% of monthly wages of the workers/laborers, as regulated in the provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law (http://www.jamsosindonesia.com/cetak/print_artikel/72).

Therefore, the provision *a quo* has restricted the right of every worker/laborer to register himself/herself as a Manpower Social Security Participant.

As the result of the coming into effect of the provision *a quo*, of 30.72 million workers/laborers having the status of permanent workers/laborers (**Exhibit P-7**), only 9.12 million workers/laborers (**Exhibit P-8**) have been registered by the entrepreneurs as Manpower Social Security Participants. In fact, in the Jakarta Special Capital Region, there are 5,361 companies with a total workers/laborers of 5.6 million persons who have not become Manpower Social Security Participants (**Exhibit P-9**).

The fact is that, the threat of criminal sanction of confinement at a maximum of 6 (six) months or fine at a maximum of Rp50,000,000.- (*fifty million rupiah*) to entrepreneurs who do not register their workers/laborers as social security participants, based on the provision of Article 29 paragraph (1) of the Manpower Social Security Law, cannot serve as a “*coercive measure*” for employers or companies to register their workers/laborers as manpower social security participants.

In fact, the provision *a quo* has resulted in numerous conflicts of norm and industrial relation conflicts due to the non-participation of workers/laborers working in a company as social security participants, such as what happened to the laborers in a cellular provider, who organized a labor strike action demanding to be registered as social security participants (<http://www.batamtimes.com/batam/3761-tuntut-jamsostek-buruh-telkomsel-demo.html>), however, it ended in a termination of employment.

The effort of filing a lawsuit in the District Court by the Manpower Service Office for the Tort committed by entrepreneurs who do not register their workers/laborers as social security participants, (http://www.waspada.co.id/Index.php?option=com_content&view=article&i

[d=124928:disnaker-tuntut-](#)

[ptmjim&catid=14:medan&Itemid=27](#)), did not immediately become a shock therapy and a coercive measure. Therefore, special interpretation of the provisions of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law is required.

5. Whereas the right to social security belongs to every person, as provided for in Article 28H paragraph (3) of the 1945 Constitution.

Therefore, every person, a worker/laborer not excepted, should have been “*able*” to register himself/herself as a social security participant, with the obligation of contributions consisting of occupational accident, death, and healthcare security ranging from 4.24% to 11.74% becomes the responsibility of the entrepreneur, and the old age benefit contribution becomes the responsibility of the worker/laborer himself/herself as old age savings or as a result of termination of employment.

6. Whereas based on the aforementioned description, in order that the provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law can provide guarantee

and certainty to workers/laborers in obtaining social security, every worker/laborer shall be individually granted the right to be “able” to register himself/herself and his/her company as a social security participant.

Therefore, the material content in the provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law should be construed as, *the social security program constitutes a right of every worker/laborer, whose participation as a social security participant is compulsory in nature, who is registered with the Social Security Organizing Body by the employer or company, as well as by the worker/laborer himself/herself who performs work in a working relation in accordance with the provision of applicable laws.*

4. PETITUM

Based on the whole description and the reasons which have been based on law and supported by evidence which have been submitted to the Constitutional Court of the Republic of Indonesia, the Petitioners request the Constitutional Court of the Republic of Indonesia to make decisions as follows:

1. To Accept and Grant the Petition of the Petitioners.

2. To declare Article 4 paragraph (1) of Law of the Republic of Indonesia Number 3 Year 1992 concerning Manpower Social Security (State Gazette of the Republic of Indonesia Year 1992 Number 14, Supplement to the State Gazette of the Republic of Indonesia Number 3468) and the provision of Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System Law (State Gazette of the Republic of Indonesia Year 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456) inconsistent with the 1945 Constitution of the State of the Republic of Indonesia, in so far as it is not construed as *the social security program constitutes a right of every worker/laborer, whose participation as a social security participant is compulsory in nature, who is registered with the Social Security Organizing Body by the employer or company, as well as by the worker/ laborer himself/herself who performs work in a working relation in accordance with the provision of applicable laws.*
3. To declare Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security (State Gazette of the Republic of Indonesia Year 1992 Number 14, Supplement to the State Gazette of the Republic of Indonesia Number 3468) and the provision of Article 13 paragraph (1) of Law

Number 40 Year 2004 concerning National Social Security System Law (State Gazette of the Republic of Indonesia Year 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456) as not having binding legal force, in so far as it is not construed as *the social security program constitutes a right of every worker/laborer, whose participation as a social security participant is compulsory in nature, who is registered with the Social Security Organizing Body by the employer or company, as well as by the worker/ laborer himself/herself who performs work in a working relation in accordance with the provision of applicable laws.*

4. To order the promulgation of this decision in the Official Gazette of the Republic of Indonesia accordingly;

Or, should the Panel of Constitutional Justices be of another opinion, we request a decision by principles of what is fair and just

[2.2] Considering whereas to prove the arguments of their petition, the Petitioners presented written evidence in the form of letters/writings marked as exhibit P-1 up to and including exhibit P-9, namely as follows:

1. Exhibit P-1 : Photocopy of Law Number 3 Year 1992 concerning Manpower Social Security;

2. Exhibit P-2 : Photocopy of Law Number 40 Year 2004 concerning National Social Security System;
3. Exhibit P-3 : Photocopy of the 1945 Constitution;
4. Exhibit P-4 : Photocopy of Law Number 24 Year 2003 concerning Constitutional Court;
5. Exhibit P-4A : Photocopy of Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning Constitutional Court;
6. Exhibit P-5 : Photocopy of Supreme Court Notification Letter Number 10297/297K/PDT/2010;
7. Exhibit P-6 : Photocopy of the Articles of Association and the By-laws of the Federation of Indonesian Labor Union Associations;
8. Exhibit P-6A : Photocopy of Identity Card in the name of Yulianti;
9. Exhibit P-7 : Photocopy of Statistics Official News of the Central Bureau Statistics Number 33/05/Th.XIII, dated May 10, 2010 entitled The Situation of the Indonesian Manpower;
10. Exhibit P-8 : Photocopy of Pelita Daily's edition of Monday, October 25, 2010, Economics and Finance Rubric entitled "*Jumlah Peserta Aktif Jamsostek* (The Number of Manpower Social Security Active Participants)";

11. Exhibit P-9 Photocopy of the News regarding “*5.361 Perusahaan di Jakarta Belum Anggota Jamsostek (5,361 Companies in Jakarta Are Not Yet Members of the Manpower Social Security)*”, source: www.jamsostek.co.id;

In addition, the Petitioners also presented one witness and one Expert who conveyed their statements during the court session on December 21, 2011 as follows:

1. The Witness, Bakit

- The witness is an employee of PT. Anugerah Setia Lestari, as a Driver with a monthly income of Rp640,000.-;
- The witness has previously suffered from kidney stone disease in 2010, and for the surgery, the witness has incurred expenses in the amount of Rp13,000,000.- from the witness' personal money; the company only assisted with health allowance in the amount of Rp350,000.- per year;
- The witness has previously requested for health expense assistance to the company, but in fact, he was asked to resign for an assistance of Rp5,000,000.-;
- The witness knows about the existence of Manpower Social Security and knows about the benefit of participation in the

Manpower Social Security, however, he is not yet registered as a Manpower Social Security participant. The witness has previously registered himself at the Manpower Social Security in Cikarang, however, he was rejected since individuals cannot register themselves, registration must be applied for by the company;

2. The Expert, Surya Tjandra

- In substance, the purpose of this petition for judicial review is to request a special interpretation of Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security and Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System Law against Article 28H paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia.
- Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security states, “The manpower social security program as intended in Article 3, shall be required for every company, for the benefit of the manpower performing work in a working relation, in accordance with the provision of this law.”

- Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System Law states, “Employers shall be required to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in.”
- The Petitioners consider that the provisions of the two Laws mentioned above have caused some disadvantages for the community, particularly the laborers, as evidenced by the following facts. The relatively small number of formal laborers who have become Manpower Social Security participants, only approximately 9,000,000 of 30,000,000 registered formal laborers. The relatively large number of companies which have not included their laborers in the Manpower Social Security, which may become a source of serious labor conflicts.
- Therefore, in the Petitioners’ opinion, special interpretation is required for the aforementioned two articles, namely that the social security program constitutes a right of every worker/laborer whose participation as a social security participant is compulsory in nature, who is registered with the Social Security Organizing Body by the employer or company

as well as by the worker/ laborer himself/herself, who performs work in a working relation in accordance with the provision of applicable laws.

- Such request, for those who are highly involved in striving for the rights of the laborers, particularly the laborers working in the formal sector, is something reasonable. Keeping in mind that in the practice, PT Jamsostek, as the existing social security organizing body, is considered less successful in demonstrating the expected performance. The relatively small participation compared to the number of existing formal laborers, the relatively difficult expansion of participation.
- According to the Expert, this happened because PT Jamsostek in the existing system, particularly in Law Number 3 Year 1992, has indeed encountered several structural issues, among other things: why is it that from the existing 30-something million formal laborers, there are only 9 million who have become Manpower Social Security participants? Why is it that PT Jamsostek is practically unable to expand the social security protection coverage for approximately 70 persons working in the informal economic sector existing in Indonesia? This is something which cannot be separated from the

limitation of the implementing rules of the Manpower Social Security Law itself.

- Government Regulation Number 14 Year 1993, which was subsequently replaced by Government Regulation Number 36 Year 1995, which constitutes derivative rules of the Manpower Social Security Law Number 3 Year 1992, allows for opting out, or choosing not to participate in the Manpower Social Security as long as the company can provide better benefit, which is not compulsory, and universal, or comprehensive in nature. The Manpower Social Security is only for formal workers. There is no opportunity provided, although later on there has been minor change to informal workers, for example, or also therein between.
- Law Number 3 Year 1992 concerning Manpower Social Security only requires laborers or workers to become participants. However, the requirement is not applied to employers or bosses. In the context of the aforementioned story of Mr. Bakit, the one who becomes a participant is the laborer. However, the employer does not become a participant or it is not required to become a participant. The same goes to the board of directors of the company, it is also not required to become a participant. Therefore, practically

there is no contribution and interconnectivity between workers/laborers and employers in the social security system constructed, while in fact, the 1945 Constitution, particularly Article 28H paragraph (3) explicitly states that every person without discrimination is entitled to social security.

- The reason why there is a structural barrier from PT Jamsostek and the Manpower Social Security Law is that as a State-Owned Enterprise, SOE, PT Jamsostek is also imposed with the obligation to seek profit or in other words, it is profit oriented, in which there is an obligation to pay dividends to the government, not for the greatest interest of participants. See also Law Number 19 Year 2003 concerning SOEs and Law Number 40 Year 2007 concerning Limited Liability Companies, the aforementioned two Laws serve as the foundation for the establishment of PT Jamsostek and the operations of PT Jamsostek.
- In the Expert's opinion, this is not in accordance with the social security principle which is non-profit, not for profit or not aimed at seeking profit. Although the management of margin surplus is allowed in so far as it is subsequently used for the greatest interest of the participants. According to the estimation made by Prof. H. Hasbullah Tabrani, a social

security expert, there is at least money in the amount of Rp12 trillion which should have constituted the laborers' money, which went into the government's pocket as non-tax revenue or income and therefore becomes the subject of income tax. Therefore, in the past, PT Jamsostek was still subject to tax on income or profit obtained, with a very small portion thereof returned to the participants, most recently it merely distributed money, but not systematically, it is only up to the directors of PT Jamsostek.

- As a legal entity with a private limited liability company nature, PT Jamsostek cannot and must not have the capacity or authority to impose sanctions, even when a violation occurs. In the context of the latter, it seems that such petition for judicial review, puts a special attention of the Petitioners in the petition for today's judicial review.
- In actuality, there have been attempts to resolve some of the structural issues above by Law Number 40 Year 2004 concerning National Social Security System and recently by Law Number 24 Year 2011 concerning Social Security Organizing Body.
- The National Social Security System Law becomes the philosophical basis providing comprehensive implementing

principles of national social security system for all Indonesian people without exception, and the Social Security Organizing Body Law establishes a social security organizing body based on this Law. Therefore, it does not merely regulate how the social security organizing body is established, but it establishes the social security organizing body itself. In other words, the Social Security Organizing Body Law particularly and specifically states, which legal entity is established? And how will it be operated? Therefore, it does not merely provided for the establishment of such body like the provisions of the State-Owned Enterprises Law or Limited Liability Companies Law.

- Compare also to Law Number 3 Year 2004 concerning Bank Indonesia, it also establishes Bank Indonesia based on the Bank Indonesia Law. Also Law Number 7 Year 2009 concerning deposit Insurance Corporation which is similar to the Social Security Organizing Body Law, with regard to the establishment of a special body with and not in the Law.
- The duty of the Social Security Organizing Body is organizing a national social security system based on the principles of humanity, benefit, and social justice for all Indonesian people based on the principles of mutual help, non-profit, openness,

carefulness, accountability, fairness, participation in compulsory and mandatory nature, and the results of the management are entirely for the greatest interest of participants.

- Therefore, the Social Security Organizing Body is granted certain obligation and authority to basically resolve the issues and problems which have occurred. The National Social Security System Law which provides the foundations and principles of the organization of national social security system and the Social Security Organizing Body Law which establishes the social security organizing body in accordance with the foundations and principles of the national social security system in the National Social Security System Law, are bringing several structural consequences.
- Whereas the aforementioned two Laws, the National Social Security System Law and the Social Security Organizing Body Law are trying to resolve the structural issues. The established Social Security Organizing Body is a public legal entity with the main duty to provide definite benefit, benefit which is definitely provided. This means that, the amount and quality of the benefit are applicable thoroughly and comprehensively, regardless of the amount of the

contribution. If, for example, we calculate the contribution from the percentage of monthly wages, there could be large and small benefits depending on the amount of wages. This is called definite contribution, so the result depends on the amount of wages. However, the system developed in the National Social Security System is definite benefit. Regardless of the amount of the contribution, the benefit will be the same, and this includes all illnesses, comprehensive in nature, applicable to all persons without exception, both the laborer and the employer, and through the management of trust fund which constitutes public fund, it is accountable to the public. In order to implement this thorough and comprehensive national social security system, two Social Security Organizing Bodies are established, namely the Health Social Security Organizing Body, which will commence its operations on January 1, 2014, and the Manpower Social Security Organizing Body, which will commence its operations on July 1, 2015.

- The task of collecting contributions of participation which is compulsory in nature, in accordance with the principle of comprehensive social security, is conducted by the Social Security Organizing Body and therefore, it is introduced by the Law to be monopolistic in nature. If it is in the form of Limited Liability Company, it cannot be monopolistic. The capacity to

determine the floor price, what the price is for purchasing services, and the partners, who will be selected and so on, which is conducted in a monopsonistic manner. Monopoly and monopsony are two important principles in the social security or social insurance system, in which there is one voice in the negotiations with service providing partners, either hospital associations or professional organization of doctors, for example in the context of health insurance. As argued by the Petitioners of this judicial review, the greatest challenge of the social security organizing body is expanding participation. We saw previously that PT Jamsostek only has 9,000,000 participants of 30,000,000 as it should be. Currently, the most recent data shows Rp33,000,000.000 for the formal sector. To answer it in accordance with the Social Security Organizing Body Law, the Social Security Organizing Body shall be granted an authority. Therefore, unlike PT Jamsostek, the future Social Security Organizing Body, namely the manpower Social Security Organizing Body shall be granted the authority to impose administrative sanctions to participants or employers not fulfilling their obligations, Article 11 sub-article f of the Social Security Organizing Body Law. Or to report it to the law enforcement apparatus regarding the non-compliance

of employers in paying contributions or in fulfilling other obligations, Article 11 sub-article g.

- So far, the Expert has never been aware of any entrepreneur, for example, or any employer who has been punished, due to not enrolling his/her laborers or workers into the Manpower Social Security. In such compulsory social insurance system with compulsory benefit, it will only be effective if all parties, namely the organizing body, or employers, and more particularly the participants, really see it as a requirement and its benefit is indeed gained in the story of Mr. Bakit. If asked, whether he is willing to, say join, he will certainly be willing to join. Is he willing to pay the contributions, he will certainly be willing to pay the contributions, as long as he feels the benefit of it. Mr. Bakit here is not poor since he has a job, although his salary is below the minimum wages in the Special Capital Region which was Rp1,300,000.00 last year while his salary was Rp650,000.00, he is not included in the criteria of poor. Therefore, he is not entitled to what we called community health insurance. As in the case of the witness, Mr. Bakit, he obtained a Statement Letter of Poverty issued using the Regional Government budget, which is used for health insurance of the community members in the region, the problem is, it is only valid for 1 month. After that, he has to

apply for it again, and he will still be verified again as to whether or not he is indeed poor, and so forth.

- This cannot be done, cannot be done merely using repressive efforts, but it also requires persuasive efforts, through awareness and particularly active participation from the participant himself/herself. In this context, a more explicit interpretation in relation to the matter in the rules of Law, particularly the participation of the participants or the right of participation of the participants becomes relevant.
- Conclusions. With regard to judicial review of interpretation of Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security, with the coming into effect of Law Number 40 Year 2004 concerning National Social Security System and Law Number 24 Year 2011 concerning Social Security Organizing Body, Law Number 3 Year 1992 concerning Manpower Social Security along with all implementing rules thereof will be automatically no longer in effect. Its organizing body, PT. Jamsostek will also be required to adjust itself and transform into the manpower National Social Security System. It will be effective as of January 1, 2014 and commence its operations on July 1, 2015. It will start implementing social security programs,

particularly occupational accident security, old age security, death security by no later than July 1, 2015. Meanwhile, with the commence of the operations of the Health Social Security Organizing Body on January 1, 2014, PT. Jamsostek will no longer organize healthcare security programs. What Mr. Bakit expected is actually a Healthcare Security. However, with the existence of the National Social Security System Law and the Social Security Organizing Body Law, this will be included as part of the Health Social Security Organizing Body, which constitutes a transformation of PT. Askes. Its working mechanism is more or less similar, but the party-in-charge and the organizer will be different, namely the Health Social Security Organizing Body.

- With regard to judicial review of interpretation of Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System, with a note that gradual implementation is indeed logical, the article, in relation to gradual participation, is indeed logical and commonly conducted in many other countries, which are starting to develop a comprehensive social security system. For example, it starts with requiring the participation of employers having a large number of laborers first. In Korea, it started with companies having more than 500 laborers, subsequently

continued with companies having more than 300 laborers, subsequently going down further until even a company with 1 laborer will be required to register its laborer or worker.

- We consider that the matter being petitioned by the Petitioners of this judicial review is not inconsistent with the spirit of Law Number 40 Year 2004 concerning National Social Security System, or later with Law Number 24 Year 2011 concerning Social Security Organizing Body, and it may help to strengthen legal interpretation of the aforementioned article, particularly in relation to the right of participation of laborers/workers to participate actively in registering themselves. In particular, if employers/bosses are negligent or late in performing their obligation to register themselves and their laborers/workers.
- In the case of Mr. Bakit, we saw that the company has indeed been negligent not to register him. It has obligation with regard to the workers in the company, if I am not mistaken, I have previously discussed that there were approximately 60 persons. It means that, if the Manpower Social Security Law states more than 10 persons, it is required to enroll its workers. Indeed, the problem later will be that there is no explicit sanction. The sanction may not be too repressive

either, in my opinion. Therefore, it requires a sanction which is persuasive in nature, in the sense that we will encourage, how to make these participants interested in joining. Are they interested in its benefits or are they experience such benefits, or because they actually feel that this is important.

- Furthermore, the Social Security Organizing Body Law and the National Social Security System Law also require employers to be compulsory participants. Therefore, health insurance will be available basically, comprehensively, equally for all people, according to the medical requirement. Manpower Social Security is still limited, Sir, which means that not all diseases can be covered. In the new system, hopefully all diseases can be covered, and the haves can contribute to the have nots. Subsequently the have nots, if they still cannot pay, but they cannot, will request to be acceptors of contribution assistance, which is also regulated in the subsequent rules.

[2.3] Considering whereas upon the aforementioned petition of the Petitioners, the Government has also submitted its statement in the form of an opening statement which was conveyed in the court session on December 6, 2011 as follows:

The opening statement of the Government with regard to the petition for Review of Law Number 3 Year 1992 concerning Manpower Social Security against the 1945 Constitution of the State of the Republic of Indonesia.

In relation to the petition for the constitutional review of Law Number 3 Year 1992 concerning Manpower Social Security, hereinafter referred to as the Manpower Social Security Law, and Law Number 40 Year 2004 concerning National Social Security System, hereinafter referred to as the National Social Security System Law, against the 1945 Constitution of the State of the Republic Indonesia petitioned by Dr. Andi Muhammad Asrun, S.H., M.H., *et al.* as legal counsels of M. Komarudin, *et al.*, hereinafter referred to as the Petitioners.

In accordance with the registration at the Registrar's Office of the Constitutional Court Number 70/PUU-IX/2011, dated October 6, 2011, with the revised petition dated October 27, 2011, please allow the Government to convey a brief explanation of the opening statement as follows.

1. The substance of the petition of the Petitioners.
 - 1) Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law which only provide the opportunity to employers

to register their workers have an impact in which the right of the workers/laborers to obtain social security can only be implemented if the entrepreneurs register the workers/laborers with the organizing body, therefore, it is inconsistent with Article 28H paragraph (3) of the 1945 Constitution of State of the Republic of Indonesia.

- 2) In the Petitioners' opinion, in order that Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law can provide security and certainty to workers/ laborers, every person, including a worker/laborer, can register himself/herself as a social security participant.
- 3) Therefore, in the Petitioners' opinion, the material content in the provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law should be construed such that the social security program constitutes a right of every worker/laborer, whose participation as a social security participant is compulsory in nature, who is registered with the Social Security Organizing Body by the employer or company, as well as by the worker/ laborer himself/herself who performs

work in a working relation in accordance with the provision of applicable laws.

2. Regarding the legal standing of the Petitioners

In relation to the legal standing of the Petitioners, and with due regard to the description of the explanation regarding the legal standing of the Petitioners in the petition for review of Law which is tentative in nature, and decided concurrently with the substance of the petition of the Petitioners, the description of the explanation regarding the legal standing of the Petitioners will be explained in full in the statements of the Government which will be submitted during the next court session or through the Registrar's Office of the Constitutional Court. Nevertheless, the Government leaves it completely to the Chief Justice of the Constitutional Court to consider and judge as to whether or not the Petitioners have the legal standing upon the coming into effect of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law, as stipulated in Article 51 paragraph (1) of Law Number 24 Year 2003, as amended by Law Number 8 Year 2011 concerning the Constitutional Court as well as based on the preceding Constitutional Court's decisions, *vide* decision Number 006/PUU-III/2005 and decision Number 11/PUU-V/2007.

3. Explanation of the Government regarding the material petitioned for review by the Petitioners.

The Chief Justice of the Constitutional Court, before the Government conveys its explanation regarding the material petitioned for review by the Petitioners, the Government will first convey several matters.

- 1) Whereas the national social security system is a state program aimed at providing certainty, protection, and social welfare for all Indonesian people, in which it is expected that every person can fulfill the minimum basic needs for living in the events which may result in the lost or decreased income due to illness, accident, lost of job, with a purpose to implement the mandate of Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia which mandates the state to develop a social security system for all the people.
- 2) Whereas the national social security system program with social insurance system constitutes a choice of legal policy which is open in nature, which is in accordance with the mandate of the 1945 Constitution of the State of the Republic of Indonesia, as explained in the Constitutional Court's Decision Number 007/PUU-III/2005 dated August 31, 2005 and affirmed in Decision 50/PUU-VIII/2010, dated November 2011 with the following consideration:

The Court is of the opinion that the National Social Security System Law has sufficiently fulfilled the purpose of Article 34 paragraph (2) of the 1945 Constitution in the sense that the social security system selected by the National Social Security System Law has sufficiently elaborated the purpose of the Constitution which requires that the developed social security system includes all people and is aimed at improving the empowerment of the weak and poor community in accordance with their human dignity.

- 3) Whereas the national social security system program has the principle as stipulated in Article 17 paragraphs (1), (2), and (3), namely that every participant shall be required to pay contributions, the amount of which shall be determined based on a percentage of wages or a fixed nominal amount. Every employer shall be required to collect contributions from its workers, to add in the required contributions, and to pay these contributions regularly to the social security organizing body. Furthermore, the amount of contributions as referred to in paragraphs (1) and (2) shall be determined for each type of program periodically in accordance with social and economic development and the increase in minimum basic needs.

Based on the aforementioned explanation, it is the obligation of the employers to collect contributions, and it is their duty to add in the required contributions, and to pay the contributions to the social security organizing body. The principle adhered to by this National Social Security System Law has been in accordance with the mandate of the 1945 Constitution of the State of the Republic of Indonesia as the Constitutional Court's Decision Number 50/ PUU-VIII/2010 dated November 21, 2011.

With regard to the material content of norm petitioned for review by the aforementioned Petitioners, the Government can provide the following explanation.

- 1) With regard to the assumption of the petition that the right of the workers/ laborers to obtain social security cannot be implemented if it is only the entrepreneurs who may register the workers/laborers to the organizing body.
 - a. The provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law have been consistently using the word "*required*" for every company/employer to enroll in the manpower social security program the workers performing work in a working relation to the social security organizing body according to the social security program they wish to participate in.

- b. Point 268 of Appendix II of Law Number 12 Year 2011 concerning the Formation of Laws and Regulations states, “In order to state the existence of an obligation which has been stipulated, the word “*required*” shall be used. If the obligation is not fulfilled, the party concerned shall be subject to a sanction.
- c. The implication of the use of the word *required* in Article 4 paragraph (1) of the Manpower Social Security Law can be seen in the Provision of Article 29 of the Manpower Social Security Law which states, “Any person who does not fulfill his/her obligations as intended in Article 4 paragraph (1), Article 10 paragraphs (1), (2) and (3); Article 18 paragraphs (1), (2), (3), (4) and (5), and then Article 19 paragraph (2), Article 22 paragraph (1) and Article 26, shall be subject to a sentence in jail for a maximum period of 6 months or a fine at a maximum amount of Rp50,000,000.00.”
- d. Therefore, based on the explanation above, the government is of the opinion that the provisions *a quo* have provided protection to laborers or workers since the provision *a quo* requires the employers, entrepreneurs to register the laborers or workers under their responsibility in the manpower social security program through the Social Security Organizing Body. If in the implementation there are still employers or

entrepreneurs who do not implement the obligation, such employers or entrepreneurs shall be subject to a sanction as provided for in Article 29 of the Manpower Social Security Law.

Based on the explanation above, the government is not of the same opinion with the assumption of the Petitioners which states that the provision *a quo* may lead to industrial relation conflicts regarding the non-participation of laborers or workers as social security participants. This is because the government is of the opinion that the assumption of the Petitioners is closely related to the implementation issues in the practice. In other words, the assumption of the Petitioners is not related in any way to the constitutionality issue of the coming into effect of the provision *a quo*.

2) With regard to the assumption of the Petitioners that previously, every person, including a worker or laborer, can register himself/herself as a social security participant, the government can provide the following explanation.

a. Whereas the government is of the same opinion with the consideration of the Constitutional Court in decision Number 50/PUU-VIII/2010 dated November 21, 2011 which states that in the National Social Security System Law, participation in insurance shall be required for every person who fulfills the requirement stipulated in the National Social Security System

Law, therefore, it is compulsory to be a participant of insurance. Therefore, the Law requires those who have fulfilled the requirement to become participants. Hence, a person who obtains social security must become a participant in the social security program. In other words, the contract between the insured or participant and the insurer, the Social Security Organizing Body, in social security is also arising due to the Law, in which the participation shall commence after the party concerned pays contribution and/or the contribution is paid by the employer. For those who are categorized as indigent or poor people, their contributions are paid by the government.

- b. The legal relationship between entrepreneurs and workers is a working relation which is based on a working agreement in legal relationship such working agreement constitutes mutual agreement. The obligation of party A1 or the entrepreneur in *contrario* constitutes a right for the other party or worker or laborer. Hence, although the Law only stated the obligation of the entrepreneur to participate in social security program, it might be interpreted that it constitutes the right of a worker to become a manpower social security participant.

- c. However, the government is of the opinion that despite the explanation in letter b above, it does not mean that every worker or laborer can freely register himself/ herself as a participant of the manpower social security program. Since if every worker or laborer registers himself/herself as a participant of the manpower social security program, it may lead to disorder and uncertainty regarding who is responsible for the registration of participation.

In addition to the matters above, the government can convey that the obligation of registration of participation by the entrepreneurs is also construed as the existence of an attached obligation to pay contributions by entrepreneurs, particularly for the occupational accident security, death security, and healthcare security programs, and to report in the event of occupational accident or death, *vide* Article 22 paragraph (1) of Law Number 3 Year 1992 *juncto* Article 5 paragraph (1) of the Government Regulation Number 14 Year 1993 concerning Procedures for Registration of Participation.

In the explanation above, the government is of the opinion that the existence of the provision which states that it is the entrepreneur who has the obligation to register, is a manifestation of legal certainty and at the same time constitutes a manifestation of the entrepreneur's responsibility in providing protection to workers which is implemented

through the manpower social security program. In other words, the provision *a quo* has been in line with the mandate of the provision of Article 28D paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia. With regard to the assumption of the Petitioners that Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law should be construed as the social security program constitutes a right of every worker/laborer, whose participation as a social security participant is compulsory in nature, who is registered with the Social Security Organizing Body by the employer or company, as well as by the worker/laborer himself/herself who performs work in a working relation in accordance with the provision of applicable laws, although it is the workers or laborers themselves who perform their work in a working relation in accordance with the provision of applicable laws and regulations, the Government can convey the following explanation:

- 1) Whereas the *petitum* of the Petitioners does not provide clear and explicit explanation, particularly in contradicting between the provision of the Manpower Social Security Law and the National Social Security System Law and the provision of the 1945 Constitution as a touchstone. In other words, the Government is of the opinion that the petition of the Petitioners is obscure.

- 2) Whereas the obligation to provide protection to their job is the responsibility of the entrepreneurs as stipulated in Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law, therefore, the Government is of the opinion that the provision petitioned for review does not require another interpretation, or that the Constitutional Court is not required to provide re-interpretation, which is either conditional, constitutional in nature, or constitutional and unconstitutional in nature, since the Government is of the opinion that the provision *a quo* is already clear, explicit, and limitative.

From the explanation above, the Government is of the opinion that the provision *a quo* has fulfilled the principles of the existence of explicitness as well as the existence of certainty, in other words, the provision *a quo* has been in line with the mandate of the constitution to provide protection to every person, which in this case, providing protection to workers or laborers.

4. Conclusions

Based on the explanation above, the Government requests the Chief Justice of the Constitutional Court who examines, hears, and decides upon the petition for Judicial Review of Law Number 3 Year 1992 concerning Manpower Social Security and Law Number 40

Year 2004 concerning National Social Security System against the 1945 Constitution to pass the decision as follows:

1. To reject the Petitioners' petition for review in its entirety or at least to declare the Petitioners' petition for review inadmissible.
2. To accept the statements of the Government in its entirety.
3. To declare Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law not inconsistent with Article 28H paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia,

In addition to verbal statements, the Government also presented one Expert who has conveyed his statements in the court session dated January 11, 2012 which in substance is as follows:

The Expert, Basani Situmorang

- PT. JAMSOSTEK (Persero) is a social security organizer which was established in accordance with the mandate of Law Number 3 Year 1992 concerning Manpower Social Security Program for manpower in the private sector. In carrying out its vision and mission, PT. Jamsostek (Persero) always endeavors to promote the interest and rights of manpower in Indonesia. In accordance with the provision of Law Number 3 Year 1992, PT. Jamsostek (Persero) organizes 4

(four) social security programs namely: Occupational Accident Security, Death Security, Old Age Security, Healthcare Security. If compared to the 5 (five) programs mandated in Law Number 40 Year 2004 concerning National Social Security System, there is only 1 (one) program which has not been managed by PT. Jamsostek (Persero), namely Retirement Security.

- In the provision of Law Number 3 Year 1992, it has been clearly stated that entrepreneurs and workers are required to participate in the Manpower Social Security Program. The same matter is also regulated in Law Number 40 Year 2004 concerning National Social Security. Article 13 paragraph (1) of Law Number 40 Year 2004 states that “Employers shall be required, to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in.” Both regulations have equal position in the order of laws in Indonesia, therefore, they also have the same binding and coercive force.
- Since the coming into effect of Law Number 40 Year 2004 concerning National Social Security System, PT. Jamsostek (Persero) has implemented the principles mandated by the Law, particularly the non-profit principle. Although the legal entity of PT. Jamsostek (Persero) is a SOE which seeks profits, the shareholders

no longer apply such principle since it is inconsistent with the non-profit principle mandated by Law Number 40 Year 2004.

- In order to harmonize the National Social Security System principle, since 2008, the shareholders of PT. Jamsostek (Persero) have not been collecting dividends from PT. Jamsostek (Persero), but the dividends are returned to participants. We can see this from the Amendment to the Articles of Association through Decree of Minister of Law and Human Rights of the Republic of Indonesia Number AHU.61869.AH.01.02 Year 2008 concerning Agreement on the Act of Amendment to the Articles of Association of the Company, particularly Article 26 which reads, “The utilization of net profit including the amount of provision for loss reserve shall be decided by the General Meeting of Shareholders. The entire net profit, after deducted by the provision for loss reserve, shall be utilized for the greatest interest of participants and for other utilizations stipulated in the General Meeting of Shareholders.
- With the existence of the aforementioned amendment to Articles of Association, PT. Jamsostek (Persero) implements the principle of the utilization of the results of management for the participants, namely as follows:
 1. Return on fund management and margin surplus are returned entirely to the participants in the form of improvement of

program benefit and improvement of participants' welfare. The return on the management of Old Age Security fund is always above the average interest of government banks.

2. Improvement of occupational accident security and death security benefits regularly.

3. Improvement of Healthcare Security Benefit

Since 2011, based on Decision of the Directors of PT. Jamsostek (Persero) Number KEP/310/102011 dated October 31, 2011 concerning the Granting of Additional Benefits for Manpower Social Security Participants, in the form of the provision of the following services: Haemodialysis, Heart surgery, Treatment of cancer diseases and treatment of HIV/AIDS diseases.

4. Improvement of the role of the enhancement of participants' quality of life through Participants Welfare programs such as:

- 4.1 Fund for the Improvement of Participants' Welfare Program

Long Term Investment in the form of apartments for rent

Loans in the form of housing loan down payment, employee cooperatives and healthcare provider, grants in the form of ambulances, free healthcare, scholarships, training, rehabilitation of Job Training

Halls, and assistance in the event of Termination of Employment.

4.2 Partnership Program

Loans in the form of Small Business Units, Education and Training, as well as Research and Development

4.3 Environment Development Program in the form of natural disaster aid, education and training, public facilities, religious facilities, nature conservation, and SOE care (*BUMN peduli*).

- In addition to the explanation above, the Manpower Social Security Program which is basic in nature with the joint effort, family and mutual help principles as contained in the soul and spirit of Pancasila and the 1945 Constitution, emphasizes on protection for workers who have relatively weaker position. Therefore, the entrepreneurs bear the main responsibility, and morally, the entrepreneurs have the obligation to improve protection and welfare of manpower. In addition, it is natural if the workers play an active role and join in taking responsibility for the implementation of manpower social security program for the sake of the manifestation of proper protection of the workers and their families.

- The manpower social security constitutes a form of protection for manpower in the form of pecuniary compensation as a replacement of a part of the lost or decreased income and as a service related to an event or situation experienced by the worker in the form of occupational accident, illness, pregnancy, childbirth, old age and death. Social security constitutes a right of manpower and on the other hand, it is the obligation of entrepreneurs to include their workers in the manpower social security program.
- Based on the aforementioned principle, Article 4 paragraph (1) of Law Number 3 Year 1992 reads: *“The manpower social security program shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law.”* Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System also reads, *“Employers shall be required, to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in.”*
- The aforementioned two provisions do not impair workers because if entrepreneurs do not register all of their workers as participants of Manpower Social Security program with the organizing body, such entrepreneurs will be subject to a criminal sanction (Article 29 of Law

Number 3 Year 1992). In order to implement Article 29 of Law Number 3 Year 1992 above, the labor union in a company can notify the entrepreneur that the entrepreneur does not carry out their responsibility, which may be subject to criminal sanction. If the entrepreneur is still disregarding the wish of the labor union, the executive body of the labor union can report the company to the local manpower supervisory staff. This is in accordance with the purpose of the establishment of labor unions based on Law Number 21 Year 2000 concerning Worker Union/Labor Union, namely to strive for, to defend, as well as to protect the rights and interests of workers/laborers as well as to improve the welfare of workers/laborers and their families. The Federation of the Indonesian Labor Union Associations should have sat together with the entrepreneur concerned to strive for the rights of the workers to obtain social security. In the petition for judicial review of Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security and Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System in which the Petitioners wish that, in addition to registration by entrepreneurs, an opportunity is also provided to a worker to register himself/herself as a participant with the organizing body. This provision may cause issues, because in order to become a Manpower Social Security participant, there is an obligation for entrepreneurs and manpower to

jointly pay the contributions in accordance with the program in which they are participating. If the worker registers himself/herself with the organizing body but the entrepreneur does not pay the contributions, the worker has not yet become a participant, the meaning of Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security and Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System is that entrepreneurs have the obligation to register their manpower with the organizing body. If their workers suffer an occupational accident, death, illness etc., the entrepreneurs still have to take the responsibility. Hence, the workers still obtain the right and protection from the company.

- PT. Jamsostek (Persero) in principle has implemented the principles of the National Social Security System. However, for the principle of participation which is compulsory in nature in particular, PT. Jamsostek requires support from the institutions having the authority of law enforcement to encourage employers to register their employees as Manpower Social Security participants. Nevertheless, PT. Jamsostek (Persero) will continuously optimize the implementation of the principles of the National Social Security System which have been implemented.

[2.4] Considering whereas with regard to the aforementioned petition of the Petitioners, the People's Legislative Assembly has conveyed written statements as follows:

A. The Provision of the Manpower Social Security Law and the National Social Security System Law petitioned for Review Against the 1945 Constitution.

The Petitioners in their petition requested for review of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law.

- Article 4 paragraph (1) of the Manpower Social Security Law reads: *"The manpower social security program as referred to in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law."*

- Article 13 paragraph (1) of the National Social Security System Law reads as follows, *"Employers shall be required, to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in."*

B. The Constitutional Rights and/or Authority which the Petitioners Considered as Having Been Impaired by the Coming Into Effect of

the Manpower Social Security Law and the National Social Security System Law.

The Petitioners in the petition *a quo* stated that their constitutional rights has been impaired and violated or at least potentially impaired and violated, in which based on logical reasoning, the impairment can be assured of occurring with the coming into effect of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law, which in substance is as follows:

1. Whereas, in the Petitioners' opinion, the right to obtain social security without exception has been impaired by the coming into effect of the provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law which provides that in order to become a social security participant, it is solely the obligation of employers or entrepreneurs to register with the social security organizing body, therefore, if the employers or entrepreneurs do not register their workers/laborers, including other laborers not associated with the Petitioners, the right of the workers/laborers to become social security participants will be limited. (*vide* Petition *a quo* p. 8).

2. Whereas, the Petitioners consider that the right of the workers/laborers to obtain manpower social security which provides protection against occupational accident, illness, pregnancy, childbirth, old age and death, is only obtained if the entrepreneur for whom the workers/laborers work registers the workers/ laborers with the Organizing Body, namely Jamsostek. (*vide* Petition *a quo* p. 9).

The Petitioners consider that the provisions of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law are inconsistent with Article 28H paragraph (3) of the 1945 Constitution, which reads:

- Article 28H paragraph (3) of the 1945 Constitution, which reads as follows, “*Every person shall be entitled to social security allowing them to develop completely as a dignified human being*”.

THE STATEMENTS OF THE PEOPLE’S LEGISLATIVE ASSEMBLY

With regard to the argument of the Petitioners as described in the Petition *a quo*, the People’s Legislative Assembly in the presentation of its perspective first described about the legal standing, which may be explained as follows:

1. Legal Standing of the Petitioners

The qualifications which have to be fulfilled by the Petitioners as a party have been provided for in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter abbreviated as the Constitutional Court Law), which states that *“The Petitioners shall be the party considering that their constitutional rights and/or authority are impaired by the coming into effect of a Law, namely:*

- a. individual Indonesian citizens;*
- b. customary law community groups insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of Republic of Indonesia as regulated in Law;*
- c. public or private legal entities; or*
- d. state institutions.”*

The constitutional rights and/or authority intended in the provision of the aforementioned Article 51 paragraph (1), are affirmed in the elucidation thereof, that *“referred to as “constitutional rights” shall be the rights provided for in the 1945 Constitution of the State of the Republic of Indonesia.”* The provision of the Elucidation of Article 51 paragraph (1) affirms that only the rights which are explicitly provided for in

the 1945 Constitution shall be deemed as “constitutional rights”.

Therefore, pursuant to the Constitutional Court Law, in order that a person or a party can be accepted as Petitioner with legal standing in the petition for judicial review of Law against the 1945 Constitution, the Petitioner must first explain and substantiate:

- a. His/her qualification as a Petitioner in the petition *a quo* as intended in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court;
- b. His/her constitutional rights and/or authority as intended in the “**Elucidation of Article 51 paragraph (1)**” which are considered as having been impaired by the coming into effect of the Law;

With regard to the parameters of constitutional impairment, the Constitutional Court has provided the definition and limitations regarding the constitutional impairment which resulted from the coming into effect of a Law which must satisfy 5 (five) requirements (*vide* Decision of Case Number 006/PUU-III/2005 and Case Number 11/PUU-V/ 2007), namely as follows:

- a. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;

- b. whereas the Petitioner considers that such constitutional rights and/or authority have been impaired by the Law being petitioned for review;
- c. whereas the aforementioned impairment of such constitutional rights and/or authority is specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. the existence of a causal relationship (*causal verband*) between the impairment and the coming into effect of the Law being petitioned for review;
- e. there is possibility that with the granting of the petition, the impairment of such constitutional rights and/or authority as argued by the Petitioners will not or will no longer occur.

If the aforementioned five requirements are not satisfied by the Petitioners in the case of judicial review of the Law *a quo*, the Petitioners do not have the qualification of legal standing as the Petitioning Party.

With regard to the aforementioned legal standing, the People's Legislative Assembly leaves it entirely to the Justices to judge as to whether or not the Petitioners have the legal standing as required by the provision of Article 51 paragraph (1) of the

Constitutional Court Law and based on the Constitutional Court's Decision of Case Number 006/PUU-III/2005 and Case Number 11/PUU-V/ 2007.

2. Judicial Review of the Manpower Social Security Law and the National Social Security System Law

With regard to the petition for review of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law, the People's Legislative Assembly conveys the statements as follows:

1. Whereas with regard to the petition of the Petitioners, the People's Legislative Assembly is required to provide a perspective regarding the position of the company and the worker. A company constitutes one of the important elements in economic activities, and worker also plays a role in conducting the company's activities. Although the company and the worker constitute two different subjects, there is interdependency between them. The company, aside from being the principal, also acts as the administrator in a working relation. In such relationship pattern, the worker has administrative rights towards the company.

2. In addition to having authority, the company also have obligations towards the manpower, namely paying wages in accordance with the applicable provisions, paying severance pay, approving leaves, providing the opportunity to establish a labor union, providing job training and providing the protection of manpower social security. In the protection of workers, the company is imposed with the obligation to organize occupational accident security, death security, old age security, and healthcare security, as well as required to be liable for the occupational accident security contributions, death security contributions and healthcare security contributions, as well as old age security for which the entrepreneur and the worker are jointly liable.
3. Whereas Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law provides the obligation of entrepreneurs to organize a manpower social security program and register their companies and workers as participants of the Manpower Social Security program with the Social Security Organizing Body. This provision is related to the administrative obligation and the company's responsibility in the implementation of the Manpower Social Security program, namely providing social security protection and

bearing the Manpower Social Security contributions as well as collecting the contributions which become the obligation of the workers, and paying the contributions to the Organizing Body as provided for in Article 20 and Article 22 of the Manpower Social Security Law.

4. Whereas considering that the obligation and responsibility of the organization of the Manpower Social Security lie upon the company, the party having the obligation to register Manpower Social Security participants with the Organizing Body is the company, not the worker himself/herself. If the company does not carry out its obligation and responsibility, the worker may demand it to the company, and if the company does not satisfy the demand of the worker, the company may be subject to a punishment. This provision is explicitly regulated in Article 29 paragraph (1) of the Manpower Social Security Law. In addition to a criminal sanction, in the event that the entrepreneur does not carry out his/her obligation, he/she may be subject to an administrative sanction. Therefore, registration is not merely administrative in nature, but rather, there is an obligation and responsibility attached to the entrepreneur, which cannot be transferred to the workers.

5. Based on the description above, in actuality, there is no constitutional impairment of the Petitioners with the coming into effect of the provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law. Therefore, the People's Legislative Assembly is of the opinion that there is no inconsistency between the Article *a quo* and Article 28H paragraph (3) of the 1945 Constitution.

Hence we conveyed the statements of the People's Legislative Assembly to be considered by the Justices of the Constitutional Court in examining, hearing and deciding upon the case *a quo* and in order to pass decision as follows:

1. To accept the Statements of the People's Legislative Assembly of the Republic of Indonesia in its entirety;
2. To declare Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law **not inconsistent** with Article 28H paragraph (3) of the 1945 Constitution.
3. To declare Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law still have binding legal force;

[2.5] Considering whereas the Petitioners and the Government have submitted their conclusions which have been submitted and received at the Registrar's Office of the Court on January 25, 2012 and January 26, 2012, which in substance remain on their respective standpoints;

[2.6] Considering whereas to shorten the description of this Decision, all that occurred during the court session shall only be indicated in the Official Report of the Court, which constitutes an inseparable part of this decision;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the petition of the Petitioners is to review the constitutionality of Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security (State Gazette of the Republic of Indonesia Year 1992 Number 14, Supplement to the State Gazette of the Republic of Indonesia Number 3468, hereinafter referred to as the Manpower Social Security Law) and Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System (State Gazette of the Republic of Indonesia Year 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456, hereinafter referred to as the National Social Security System Law), which state:

- **Article 4 paragraph (1) of the Manpower Social Security Law:**
“The manpower social security program as intended in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law.”

- **Article 13 paragraph (1) of the National Social Security System Law:** *“Employers shall be required to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in.”*

The norm of the 1945 Constitution which serves as the touchstone, namely:

- **Article 28H paragraph (3):** *“Every person shall be entitled to social security allowing them to develop completely as a dignified human being”*, with the reason as stated in the Facts of the Case section;

[3.2] Considering whereas prior to considering the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) shall first consider the following matters:

- a. Authorities of the Court to examine, hear and decide upon the petition *a quo*;

- b. Legal standing of the Petitioners;

with regard to the aforementioned two matters, the Court is of the following opinion:

Authorities of the Court

[3.3] Considering whereas pursuant to Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law), and Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 8, Supplement to the State Gazette of the Republic of Indonesia Number 4358), the Court have the authority to hear cases at the first and final levels the decision of which shall be final, in order to review Laws against the 1945 Constitution;

[3.4] Considering whereas the petition *a quo* is regarding the review of the constitutionality of Law *in casu* Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law against the 1945 Constitution, therefore, the

Court has the authority to examine, hear and decide upon the petition *a quo*;

Legal Standing of the Petitioners

[3.5] Considering whereas based on Article 51 paragraph (1) of the Constitutional Court Law and the Elucidation thereof, the parties eligible to act as a Petitioner in the review of a Law against the 1945 Constitution shall be those considering that their constitutional rights and/or authority are impaired by the coming into effect of a Law being petitioned for review, namely:

- a. individual Indonesian citizens (including groups of people having a common interest);
- b. customary law community groups insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of Republic of Indonesia as regulated in Law;
- c. public or private legal entities; or
- d. state institutions;

Hence, the Petitioner in the review of a Law against the 1945 Constitution must first explain and substantiate:

- a. his/her position as a Petitioner as referred to in Article 51 paragraph (1) of the Constitutional Court Law;
- b. the impairment of constitutional rights and/or authority granted by the 1945 Constitution caused by the coming into effect of the Law being petitioned for review;

[3.6] Considering also whereas the Court, following the issuance of Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007, as well as subsequent Decisions, is of the opinion that the impairment of constitutional rights and/or authority as intended in Article 51 paragraph (1) of the Constitutional Court Law must meet five requirements, namely:

- a. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;
- b. the Petitioner considers that such constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review;
- c. the impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

- d. there is a causal relationship (*causal verband*) between the relevant impairment of constitutional rights and/or authority and the Law petitioned for review;
- e. the possibility that with the granting of the Petitioner's petition, the impairment of such constitutional rights and/or authority argued by the Petitioner will not or will no longer occur;

[3.7] Considering whereas pursuant to Article 51 paragraph (1) of the Constitutional Court Law and the requirements of constitutional rights and/or authority as described above, the Court shall subsequently consider the legal standing of the Petitioners in the petition *a quo*;

[3.8] Considering whereas the Petitioners are Indonesian citizens individuals who considered that their constitutional rights are impaired by the coming into effect of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law. Such constitutional impairment, in the Petitioners' opinion, is that a laborer loses the protection against occupational accident, illness, pregnancy, childbirth, old age and death since his/her right of social security is restricted because the authority to become a social security participant is solely the authority of the employer or company;

[3.9] Considering whereas based on the consideration in paragraphs [3.7] and [3.8] above, as well as in relation to the impairment of

the Petitioners as individual Indonesian citizens, the Petitioners have a constitutional right which is impaired by the coming into effect of the Law petitioned for review. Such impairment is specific in nature and there is a causal relationship (*causal verband*) between the relevant impairment with the coming into effect of the Law petitioned for review. Hence, the Court is of the opinion that the Petitioners have a legal standing in requesting the petition *a quo*;

[3.10] Considering whereas since the Court has the authority to examine, hear and decide upon the petition *a quo* and the Petitioners have a legal standing, the Court shall subsequently consider the substance of the petition;

The Substance of the Petition

The Opinion of the Court

[3.11] Considering whereas the substance of the issues presented by the Petitioners is review of the constitutionality of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law against Article 28D paragraph (1) and Article 28H paragraph (3) of the 1945 Constitution.

[3.12] Considering whereas the Petitioners argued that the provision of Article 4 paragraph (1) of the Manpower Social Security Law has impaired the constitutional right of the Petitioners, since the protection

against occupational accident, illness, pregnancy, childbirth, old age and death can only be obtained if the entrepreneur for whom the workers/laborers work has registered the workers/laborers with the organizing body namely PT. Jamsostek as provided for in Article 4 paragraph (1) of the Manpower Social Security Law, while the obligation of employers to gradually register their workers with the Social Security Organizing Body as participants according to the social security program they wish to participate in as intended in Article 13 paragraph (1) of the National Social Security System Law in order to fulfill the constitutional right guaranteed in Article 28H paragraph (3) of the 1945 Constitution which states, *“Every person shall be entitled to social security allowing them to develop completely as a dignified human being”*, is not implemented since if employers do not register their workers, the workers do not obtain protection, therefore, in the Petitioners’ opinion, Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law are inconsistent with the 1945 Constitution in so far as it is not construed as, *“The social security program constitutes a right of every worker/laborer, whose participation as a social security participant is compulsory in nature, who is registered with the Social Security Organizing Body by the employer or company, as well as by the worker/ laborer himself/herself who performs work in a working relation in accordance with the provision of applicable laws.”*;

[3.13] Considering whereas the Court is of the opinion that Article 4 paragraph (1) of the Manpower Social Security Law which states, “*The manpower social security program as intended in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law*”, and Article 13 paragraph (1) of the National Social Security System Law which states, “*Employers shall be required to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in*” are inconsistent with Article 28H paragraph (3) of the 1945 Constitution which states that, “*Every person shall be entitled to social security allowing them to develop completely as a dignified human being.*” Both provisions, although having explicitly imposed the obligation on companies and employers to register themselves and their workers with the Social Security Organizing Body as participants according to the social security program they wish to participate in, have not guaranteed the existence of the right of workers of social security which allows them to develop themselves completely as a dignified human being. If companies or employers do not register themselves and they do not register their workers to obtain manpower social security with the organizer of the social security system, by fulfilling the obligation to pay its contributions, the workers will not obtain their rights which are guaranteed by the 1945 Constitution. Since the Law only imposes the obligation on companies or employers to register

themselves and their workers, while in fact, although the aforementioned Law imposes criminal sanction, there are still many companies which are reluctant to do it, thus there are also many workers who lost their right of social security which is protected by the constitution. This is inconsistent with Article 28D paragraph (1) of the 1945 Constitution which states that, *“Every person shall have the right to fair recognition, guarantee, protection, and legal certainty as well as equal treatment before the law”*;

Although there is a criminal sanction for the negligence of companies or employers in registering the participation of their workers in the manpower social security or with the organizer of the National Social Security System, it is only for imposing criminal sanction on companies or employers, while the rights of the workers to social security which allows them to develop themselves completely as a dignified human being, have not yet been obtained. Furthermore, since the protection, advancement and enforcement of human rights falls under the state’s responsibility, particularly the government [*vide* Article 28I paragraph (4) of the 1945 Constitution], it is appropriate that the state, through the laws and regulations, provides the guarantee of the enforcement of such obligation in order that the rights of the workers can be satisfied;

[3.13.1] Considering whereas in the petitem of the Petitioners, the two articles petitioned for review are combined into one. The Court is of the opinion that since the review consists of two norms in two different Laws,

there will be a separation in the considerations and the injunction of decisions;

[3.13.2] Considering whereas based on all of the aforementioned considerations, the Court is of the opinion that Article 4 paragraph (1) of the Manpower Social Security Law which states, “*The manpower social security program as intended in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law*” is inconsistent with the 1945 Constitution and therefore, it does not have binding legal force if it is construed as eliminating the right of workers to register themselves as participants of social security program on the company’s account when it is obvious that the company has not registered its workers with the Social Security organizer. Therefore, the article should be declared as conditionally constitutional such that it must be read in full as follows, “*The manpower social security program as intended in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law and the workers shall be entitled to register themselves as participants of social security program on the company’s account when it is obvious that the company has not registered them with the Social Security organizer*”;

[3.13.3] Considering whereas Article 13 paragraph (1) of the National Social Security System Law which states, “*Employers shall be required to*

gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in” is also inconsistent with the 1945 Constitution and therefore, it does not have binding legal force if it is construed as eliminating the right of workers to register themselves as participants of social security program on the employer’s account when it is obvious that the employer has not registered its workers with the Social Security Organizing Body. Therefore, the article should be declared as conditionally constitutional such that it must be read in full as follows, “Employers shall be required to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in and the workers shall be entitled to register themselves as participants of social security program on the employer’s account when it is obvious that the employer has not registered them with the Social Security Organizing Body”;

[3.13.4] Considering whereas based on the considerations above, the Court is of the opinion that the provision of Article 4 paragraph (1) of the Manpower Social Security Law and Article 13 paragraph (1) of the National Social Security System Law has not explicitly provided guarantee on the rights of worker to social security. In order to fulfill the right of the workers to social security, both articles petitioned for review by the Petitioners must be declared conditionally inconsistent with the 1945 Constitution. The Court is of the opinion that the petition of the Petitioners has legal basis;

4. CONCLUSIONS

Based on the considerations of facts and laws as described above, the Court has come to the following conclusions:

- [4.1] The Court has the authority to examine, hear, and decide upon the petition *a quo*;
- [4.2] The Petitioners have a legal standing to file the petition *a quo*;
- [4.3] The petition of the Petitioners has a legal basis;

Pursuant to the 1945 Constitution of the State of the Republic of Indonesia, Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 Year 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076).

5. INJUNCTION OF DECISIONS

Passing the Decision,

To declare:

- To grant the Petitioners' petition in its entirety;
- Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security (State Gazette of the Republic of Indonesia Year 1992 Number 14, Supplement to the State Gazette of the Republic of Indonesia Number 3468) which states, "*The manpower social security program as intended in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law*" is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia if it is construed as eliminating the right of workers to register themselves as participants of social security program on the company's account when it is obvious that the company has not registered its workers with the social security organizer;
- Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security (State Gazette of the Republic of Indonesia Year 1992 Number 14, Supplement to the State Gazette of the Republic of Indonesia Number 3468) which states, "*The manpower social security program as intended in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law*" has no binding legal force if it is construed as

eliminating the right of workers to register themselves as participants of social security program on the company's account when it is obvious that the company has not registered its workers with the social security organizer;

- Article 4 paragraph (1) of Law Number 3 Year 1992 concerning Manpower Social Security (State Gazette of the Republic of Indonesia Year 1992 Number 14, Supplement to the State Gazette of the Republic of Indonesia Number 3468) must be read in full as follows, *“The manpower social security program as intended in Article 3 shall be required for every company for the benefit of the manpower performing work in a working relation in accordance with the provision of this law and the workers shall be entitled to register themselves as participants of social security program on the company's account when it is obvious that the company has not registered them with the social security organizer”*;
- Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System (State Gazette of the Republic of Indonesia Year 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456) which states, *“Employers shall be required to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in”* is

inconsistent with the 1945 Constitution of the State of the Republic of Indonesia if it is construed as eliminating the right of workers to register themselves as participants of social security program on the employer's account when it is obvious that the employer has not registered its workers with the Social Security Organizing Body;

- Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System (State Gazette of the Republic of Indonesia Year 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456) which states, "*Employers shall be required to gradually register themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in*" has no binding legal force if it is construed as eliminating the right of workers to register themselves as participants of social security program on the employer's account when it is obvious that the employer has not registered its workers with the Social Security Organizing Body;
- Article 13 paragraph (1) of Law Number 40 Year 2004 concerning National Social Security System (State Gazette of the Republic of Indonesia Year 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456) must be read in full as follows, "*Employers shall be required to gradually register*

themselves and their employees with the Social Security Organizing Body as participants, according to the social security program they wish to participate in and the workers shall be entitled to register themselves as participants of social security program on the employer's account when it is obvious that the employer has not registered them with the Social Security Organizing Body”;

- To order the promulgation of this decision in the Official Gazette of the Republic of Indonesia as appropriate;

Hence this decision was made in the Consultative Meeting of Justices attended by seven Constitutional Court Justices, namely Moh. Mahfud MD as the Chief Justice and concurrent Member, Achmad Sodiki, Muhammad Alim, Maria Farida Indrati, Ahmad Fadlil Sumadi, Hamdan Zoelva, and Anwar Usman respectively as Members, on **Thursday, the second of August two thousand and twelve**, and was pronounced in the Plenary Session of the Constitutional Court which was open for the public on **Wednesday, the eighth of August two thousand and twelve**, by seven Constitutional Court Justices, namely Moh. Mahfud MD as the Chief Justice and concurrent Member, Achmad Sodiki, Muhammad Alim, Maria Farida Indrati, M. Akil Mochtar, Ahmad Fadlil Sumadi, and Anwar Usman respectively as Members, assisted by Fadzlun Budi SN as Substitute Registrar, in the presence of the Petitioners/their Attorney(s) and the

Government or its representative, without the presence of the People's
Legislative Assembly or its representative.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD.

JUSTICES,

Sgd.

Achmad Sodiki

Sgd.

Maria Farida Indrati

Sgd.

Ahmad Fadlil Sumadi

Sgd.

Muhammad Alim

Sgd.

M. Akil Mochtar

Sgd.

Anwar Usman

SUBSTITUTE REGISTRAR,

Sgd.

Fadzlun Budi SN